Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-149

LILLIE F. FITZGERALD,

Petitioner,

v.

CONNECTICUT GENERAL LIFE INSURANCE COMPANY, a corporation,

&

STEPHANAE FITZGERALD,

&

EDITH FITZGERALD,

&

THE OHIO STATE LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA COURT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

The sole question is whether the Court of Appeals correctly held (1) that the Michigan Court Order of May 19, 1972,

superseded its Order of April 28, 1972, and (2) that the Order of May 19, 1972, did not enjoin Clemens Fitzgerald from changing the beneficiaries of his life insurance policies.

COUNTERSTATEMENT OF THE CASE

The "Statement of the Cases" as set forth in the Petition for Writ of Certiorari is so confusing and misleading that only a complete counter-statement will frame the alleged issues in the case.

Clemens H. Fitzgerald, Jr. (Fitzgerald) and Lillie Fitzgerald (Lillie) were married on May 4, 1971 in Alexandria, Virginia and separated on April 21, 1972 in Michigan. Lillie, a resident of Washington, D.C., did not move to Michigan to live with her husband until July 31, 1971; hence, the couple lived together for eight months and a few days. On April 26, 1972 Fitzgerald filed a complaint for divorce against Lillie in Case No. 206138, Circuit Court for Wayne County, Michigan. (Fitzgerald's Case). On April 28, 1972, Lillie filed a complaint for separate maintenance against her husband in Case No. 206387, in the same court. (Lillie's Case.) In Lillie's case an *ex parte* injunctive order issued on April 28, 1972 (First Injunction) which directed, *inter alia,* that Fitzgerald not dispose of his personal property and not change the beneficiaries named in his insurance policies. (See p. 17a, Appendix of Petition.) Lillie filed a counter-claim for divorce in Fitzgerald's case on May 16, 1972. Thereafter, on May 19, 1972 Fitzgerald's case and Lillie's case were consolidated by stipulation of the parties and by order of Court. Appendix p. 1a. On that same day a second preliminary restraining order issued in the consolidated cases in which Fitzgerald was enjoined from disposing of his personal property, except that this second order specifically excluded any mention of insurance policies. (hereafter referred to as the Second Injunction) [See Petitioner's Appendix, p. 17a].

Fitzgerald had a number of life insurance policies with

different insurers. Only his policies with Connecticut General Life Insurance Company (Connecticut) for $50,000.00 issued on June 26, 1970 (Connecticut Policy #1); the policy issued on August 1, 1970 for $30,000.00 (Connecticut Policy #2); and a $15,000.00 policy issued by the Ohio State Life Insurance Company, Inc., (Ohio State) on December 5, 1963 (the Ohio Policy), are involved here. The original beneficiary named in Connecticut Policy #1 was Stephanae Fitzgerald (Stephanae), Fitzgerald's minor daughter; it was changed to Lillie on July 2, 1971; and again changed to Edith Fitzgerald (Edith), Fitzgerald's mother, and to Stephanae on August 28, 1972. The beneficiary originally designated in Connecticut Policy #2 was Edith, which was changed to Lillie on July 2, 1971, and again changed to Edith on November 20, 1972. The Ohio Policy named Stephanae as the original beneficiary; it was changed to Lillie on May 28, 1971 and again changed on August 10, 1972 to name Edith as beneficiary. All policies were owned by Fitzgerald and the changes were made by him.

After Lillie's and Fitzgerald's cases had been consolidated the parties reached an agreement concerning a property settlement whereby Lillie accepted $18,000.00 cash in lieu of all other claims and assets. This agreement was placed on the record in open court on March 20, 1973 by Lillie, who was under oath and under advice of counsel. It was to be incorporated into the subsequent divorce decree. Fitzgerald was violently killed on April 3, 1973 at the age of 43. The divorce action, scheduled for hearing on April 9, 1973, was dismissed without prejudice on Lillie's motion on the day of the hearing.

Lillie sold the marital home she had owned jointly with Fitzgerald in Michigan in July of 1973 for $66,500.00. After payment of encumbrances of $28,500.00, she received the difference of $38,000.00 and moved to Washington, D.C. prior to August, 1973, when this action commenced.

Lillie sued Connecticut and Ohio State in separate cases in the U.S. District Court for the District of Columbia (District Court), claiming she was the rightful beneficiary under

Connecticut policies 1 and 2 and the Ohio policy, and that Fitzgerald had wrongfully changed beneficiaries in violation of the First Injunction. By agreement between counsel for Lillie and Connecticut, that suit was dismissed and Connecticut then filed suit in the same Court, in the nature of an interpleader action under Title 28, Section 1335, naming Lillie, Edith and Stephanae as defendants. Edith is a resident of New Jersey and Stephanae a resident of Michigan. Ohio State filed its counter claim in interpleader; Edith and Stephanae were made parties to that action. Connecticut and Ohio State placed the disputed funds in the registry of the District Court, where they now rest in an interest bearing account. The consolidated cases (a third case filed by Lillie was consolidated with these two, but is not in issue here) were assigned to Judge Thomas A. Flannery.

Lillie contended that she was entitled to the proceeds of the policies because Fitzgerald changed the beneficiaries in violation of the First Injunction, and that she is the rightful beneficiary. Edith and Stephanae raised a number of defenses, only three of which are significant at this point: that Fitzgerald was never served with the First Injunction and hence it was of no effect; that, even if Fitzgerald was served, the First Injunction was not valid because it was superseded by the Second Injunction which permitted a change of beneficiaries; and that the settlement agreement had rendered the injunctions moot. These issues were raised first in cross motions for summary judgment. Judge Flannery ruled that the question of service of the First Injunction raised an issue of fact that required a trial. He found that that was the only issue in the case, and did not decide any of the other issues on the theory that he could not "second guess" the Michigan Court as to the effect of the Second Injunction or the property settlement agreement. The case was tried without a jury on the sole issue of service of the First Injunction. Judge Flannery found that Fitzgerald had been served with the First Injunction, that he changed beneficiaries wrongfully, and that Lillie was entitled to the disputed funds.

While the consolidated cases were before Judge Flannery, Lillie attempted to reopen the Michigan cases. Judge Flannery enjoined her from doing so. Edith was also enjoined from suing the insurance companies in New Jersey and her suit in the New Jersey Courts was dismissed. Lillie appealed Judge Flannery's order enjoining her from proceeding in Michigan to the Circuit Court of Appeals for the District of Columbia Circuit (Circuit Court) which affirmed Judge Flannery. However, that judgment was vacated when Lillie voluntarily dismissed her appeal. Appendix p. 5a. Edith and Stephanae appealed Judge Flannery's Decision to the Circuit Court. Lillie petitioned Judge Flannery to fix the amount of a supersedeas bond on appeal. Since all monies were in the registry of the District Court and no supersedeas bond was necessary, Judge Flannery ordered the appellants to post a $100.00 bond for costs and stayed execution pending appeal. A cash bond was posted.

Lillie then moved in the Circuit Court to dismiss the appeal of Edith and Stephanae on the grounds, *inter alia*, that no supersedeas bond had been filed and that the stay of execution with $100.00 bond for costs was improper. The Circuit Court denied the motion. See Petitioner's Appendix 4 at p. 12a.

The Circuit Court reversed the District Court and found that Edith and Stephanae were entitled to the disputed funds. See Petitioner's Exhibit 5 at pp. 13a–18a of the Appendix to the Petition for Writ of Certiorari. This petition followed.

ARGUMENT

There are a number of compelling reasons for not granting the Writ, which are set forth as follows:

1. Rule 23(4) of the Rules of this Court sets forth a reasonable requirement–that the petitioner present the essentials of his case in an accurate, brief and clear manner so that the points requiring consideration can be readily and

adequately understood. Even the most careful reading of the petition by someone intimately familiar with the facts and law of the case fails to disclose just what the petitioner is trying to say. It is clear that petitioner is unhappy with the rulings of the Circuit Court, but the petitioner sets forth no legal basis on which to attack the rulings. In fact, counsel for Edith and Stephanae are in the anamolous position of having to supply a clear statement of the case so that this Court can rule on Lillie's petition. The reason the petition is muddled is apparent. There is no basis for granting it nor was there any basis for filing it. Hence, lacking any substantive reason for the petition, Lillie could only file a muddled, unclear statement of her dissatisfaction with the rulings of the Circuit Court.

2. Rule 19 of the Rules of this Court sets forth the Court's basis for granting or denying review on certiorari—that there be "special and important reasons therefore." Petitioner not only hasn't supplied special and important reasons, she has supplied no reasons. She sets forth no federal questions of substance, and no instance where this case is not in accord with applicable decisions of this Court, as set forth in subsection (a) of the Rule. She has not shown a conflict in the Circuit Courts or between a Circuit Court and a state court. She has not shown or even indicated that an important question of federal law has not been, but should be decided by this Court, that a federal question has been decided in conflict with this Court, or that the Circuit Court has departed from the accepted and usual course of judicial proceedings. The Petition appears to have no sound basis in law or fact.

Both of the injunctive orders issued out of the same state court. Petitioner chose to seek redress in a federal court. The federal court had jurisdiction over the parties and subject matter, and the concomitant power to enjoin petitioner from litigating the same issues in the state court. This Court clearly should not exercise its jurisdiction and review this case.

3. Petitioner's first reason for grant the writ—that the Federal Courts should not enjoin state court action—has

absolutely nothing to do with this case. No state court was enjoined at any time. Lillie was enjoined. She was enjoined from litigating in the Michigan courts the issues then pending before the District Court. She was enjoined pursuant to express provisions of the Interpleader Statute, which gives the District Court the power to do so. 28 U.S.C. 2361, See also *O'Daniel v. Porter*, 99 U.S. App. D.C. 398; 240 F.2d 636 (1957); *Metropolitan Life Insurance Co. v. Skov*, 45 F. Supp. 140 (D. Ore. 1942); *Holcomb v. Aetna Life Insurance Co.*, 255 F.2d 577, 582 (C.A. 10, 1958); *Austin v. Texas-Ohio Gas Co.*, 218 F.2d 739, 743 (C.A. 5, 1955).

All of the parties were before the U.S. District Court, the funds were deposited in its registry, and only that court had the power to grant complete relief. Lillie was properly enjoined. Further, she appealed the injunctive order of Judge Flannery to the Circuit Court, which Court issued its judgment affirming Judge Flannery. However, Lillie moved to dismiss her appeal, which was granted, and the Circuit Court vacated its earlier judgment.

In any event, the order of Judge Flannery was a final and appealable order. Since the time for taking an appeal has long since passed, Lillie cannot now come before this Court and seek redress. Once she dismissed her appeal, and the time for noting an appeal has elapsed, she can no longer seek appellate review. Hence the injunction serves as no basis for granting the Writ of Certiorari, and petitioner's allegations merely point out the frivolous nature of this petition.

4. Petitioner alleges that the Circuit Court incorrectly interpreted the effect of the two injunctive orders entered in the Michigan cases. She places great importance on the titles of the orders ("Preliminary Injunctive Order" as opposed to "Temporary Restraining Order") and whether one superseded or dissolved the other. These arguments are, at best, spurious.

The titles of the orders are of no consequence. The substance of the orders is clear, and that is what governs. Lillie is playing word games rather than looking to the substance of the orders and their legal effect. She is

attempting to correlate the injunctive orders issued by a Michigan state court with the procedures set forth in Rule 65, F.R.Civ.P. regarding injunctions in Federal Courts. The two injunctions in the Michigan cases were not issued pursuant to F.R.Civ.P. 65 and have nothing to do with the Federal Rules. The titles of the orders have nothing to do with the Federal Rules of Civil Procedure.

Lillie has failed to mention or to cite Michigan General Court Rule 724(5). That rule states "Each and every provision of any prior order of any court of record shall continue in full force and effect so long as or until such provision or provisions are superseded, changed, or terminated by *subsequent order* of a court of record." (Emphasis supplied). Rule 724(5), Michigan General Court Rule. Thus, the Second Injunction automatically superseded the First Injunction. There was no need to dissolve the First Injunction because it was superseded by operation of Law. There is no need to engage in a futile game of semantics to distinguish between the words "supersede" and "dissolve". The Michigan Law (Rule 724) has resolved that alleged issue and the Court of Appeals has reaffirmed the logic of the Michigan Law.

5. Petitioner contends that the appeal of Edith and Stephanae was not properly before the Circuit Court because they did not post a supersedeas bond. She alleges further that the supersedeas bond is required by Rule 62, F.R.Civ.P., and that Judge Flannery, by requiring only a $100.00 bond for costs, applied Rule 62 in an unequal manner and thereby denied procedural and substantive due process to Lillie that constituted "a denial of equal protection of the laws."

Rule 62 does not *require* posting of a supersedeas bond. Posting bond is within the sound discretion of the trial court. Since the disputed funds were in the registry of the District Court there was no need to post a bond. Petitioner had failed to read Rule 62 in its entirety. Further, Petitioner moved to dismiss the appeal of Stephanae and Edith in the Circuit Court on the ground that no supersedeas bond had been filed. The motion was denied.

Assuming all of Lillie's contentions to be accurate, Lillie has failed to show or explain how Judge Flannery applied Rule 62 F.R.C.P. in an unequal manner. Nor does she explain how Judge Flannery's ruling or the dismissal of her motion by the Circuit Court in any way was a denial of due process or "of equal protection of the laws." Petitioner uses the constitutional words of art but doesn't seem to understand their meaning or application to this case. Respondents are unable to otherwise respond to this allegation of Petitioner because the allegation is so unclear, remote and confusing and is unsupported by authority.

6. Petitioner states that the federal courts (presumably the U.S. District Court and Circuit Court) do not have jurisdiction over the subject matter or parties, and that the Circuit Court's construction of the Injunctive Orders was incorrect. She appears to rely on Rule 65, F.R.Civ.P. regarding ten day temporary restraining orders as authority to determine the validity of the First and Second Injunctions and claims further than the Circuit Court did not have *in personam* jurisdiction in the case. She cites no authority to support any of these contentions, which appear to be repetitious.

In any event, the First and Second Injunctions issued out of a Michigan State Court, and were not issued pursuant to Rule 65, F.R.Civ.P. That Federal rule has no bearing on the injunctions. The issue of jurisdiction of the lower Courts is raised late. Lillie sought the jurisdiction of the Federal Courts. The question of jurisdiction was not raised by any party to this petition. There is no doubt that the District and Circuit Courts had jurisdiction, and Lillie has not introduced one iota of evidence or law to show otherwise. She has made a bare allegation that is entirely without foundation.

Rule 23(1)(g) of the Supreme Court Rules specifies that the petitioner must set forth the basis for federal jurisdiction in the court of first instance. Petitioner has failed to do so, choosing instead to merely cite the earlier decisions of the District Court and Circuit Court. Respondents are forced to correct this oversight. Jurisdiction is founded upon Title 28

Section 1335 giving the District Court original jurisdiction in interpleader actions. The sum involved is over $500.00, and there is clear diversity of citizenship between Stephanae, a resident of Michigan, Edith, a resident of New Jersey, Connecticut General, a Connecticut Corporation, Ohio State, an Ohio Corporation, and Lillie, a District of Columbia resident. Jurisdiction of the Federal Courts is clear. Finally, Petitioner asserts jurisdiction of this Court under 28 U.S.C. 1234(1). No such statute exists.

7. Petitioner alleges that the decision of the Circuit Court is so inconsistent with decisions emanating out of other jurisdictions and decisions of this Court "that the need for clarification is imperative." She has failed to cite these alleged numerous other decisions which are inconsistent. Her failure to cite these alleged inconsistent cases is a defect fatal to her petition for a Writ of Certiorari. However, her failure to supply such cases is understandable—no such cases exist.

The Court of Appeals did not decide an important question of Michigan law in a way that contravened prior Michigan decisions. The decision was fully consonant with established Michigan law. *See*, Michigan General Court Rule 724(5); *Detroit & Erin Plank-Road Co. v. Macomb Circuit Judge*, 109 Mich. 371, 67 N.W. 531 (1896); *City of Troy v. Holcomb*, 362 Mich. 163, 169, 106 N.W.2d 762 (1961); *Wayne Creamery v. Suyak*, 10 Mich. App. 41, 158 N.W.2d 825 (1968).

CONCLUSION

Since there are no sound reasons for granting the Petition for Writ of Certiorari, the petition should be denied.

Respectfully submitted,

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APPENDIX

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

CLEMENS H. FITZGERALD,
Plaintiff

-vs- C.A. No. 206-138

LILLIE FITZGERALD,
Defendant

LILLIE FITZGERALD,
Plaintiff

-vs- C.A. No. 206-387
F.C. No. 290-243

CLEMENS H. FITZGERALD,
Defendant

ORDER CONSOLIDATING CAUSES
ORDER DENOMINATING CAUSE

At a session of said Court held at the City-County Building at City of Detroit, State of Michigan on May 19, 1972.

PRESENT: HONORABLE EDWARD E. BELL, Circuit Judge

Upon reading and filing the hereinafter set forth Stipulation whereon the parties hereto through their respective attorneys have stipulated and agreed that the above entitled respective causes bearing No. 206-138 and 206-387 respectively may be consolidated as one and that said cause shall be entitled Clemens H. Fitzgerald v. Lillie Fitzgerald and that pleadings filed in both causes shall be considered and treated as having been filed properly in the consolidated cause.

Upon motion of I. GOODMAN COHEN, attorney for

defendant, LILLIE FITZGERALD,

IT IS HEREBY ORDERED:

1) That causes of and in Wayne Circuit Court bearing numbers 206-138 and 206-387 may be and are hereby consolidated as one cause;

2) That said consolidated cause shall bear No. 206-138 and hereafter be entitled, CLEMENS H. FITZGERALD, Plaintiff and Cross-Defendant vs. LILLIE FITZGERALD, Defendant and Cross-Plaintiff;

3) That pleadings heretofore filed in cause No. 206-387 shall hereafter be considered and treated as having been and as being filed in cause No. 206-138;

4) That the Clerk of Wayne Circuit Court take any and all steps necessary and proper to effectuate the foregoing.

EDWARD F. BELL
CIRCUIT JUDGE

STIPULATION

The parties hereto by and through the undersigned as their respective attorneys hereby stipulate and agree as follows:

1) That causes in Wayne Circuit Court bearing No. 206-138 and 206-387 may be consolidated as and in one case.

2) That said consolidated cause shall hereafter bear No. 206-138 and shall hereafter be entitled, "CLEMENS H. FITZGERALD, Plaintiff and Cross-Defendant vs. LILLIE FITZGERALD, Defendant and Cross-Plaintiff."

3) That pleadings heretofore filed in cause No. 206-387 shall hereafter be considered and treated as having been and as being filed in cause No. 206-138.

4) That the Clerk of Wayne Circuit Court take any and all steps necessary and proper to effectuate the foregoing.

/s/ Woodrow H. Floyd
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961-7393

/s/ I. Goodman Cohen
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Dated: Detroit, Michigan
May 16, 1972.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1485 — September Term, 1974
Civil Action 1676-73

Connecticut General Life Insurance
Company, a corporation

v.

Lillie F. Fitzgerald,
Edith L. Fitzgerald, et al.,
Appellants

Before: Wright and McGowan, Circuit Judges

ORDER

It is ORDERED by the Court, *sua sponte,* that the judgment of this Court with attached memorandum of June 20, 1975 and the order of June 26, 1975 amending that judgment be, and the same hereby are, vacated.

The Clerk is directed to transmit a certified copy of this order to the Clerk of the District Court as promptly as the business of his office permits.

Per Curiam.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 74-1485 — September Term, 1974
Civil 1676-73

Connecticut General Life Insurance
Company, a corporation

v.

Lillie F. Fitzgerald, Appellant
Edith L. Fitzgerald, et al

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Before: BASTIAN,* Senior Circuit Judge, WRIGHT and McGOWAN, Circuit Judges

JUDGMENT

This cause came on for consideration on the record on appeal from the United States District Court for the District of Columbia and briefs were filed by the parties. On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the judgment of the District Court is hereby affirmed, for the reasons stated in the attached memorandum.

Per Curiam
For the Court

/s/ Hugh E. Kline
Hugh E. Kline
Clerk

*Senior Circuit Judge Bastian sat as a member of the court during deliberations on this case, but died before the judgment and accompanying memorandum were prepared.

MEMORANDUM OPINION

Lillie Fitzgerald was the beneficiary under several life insurance policies covering her husbands life. At the time of their divorce [proceedings, an] injunction was entered barring her husband, Clemens, from making any change of beneficiaries.

At the time of Clemen's death, Lillie was no longer the named beneficiary, having lost that status to Clemen's mother and daughter. All three parties applied for benefits under the policies. The insurance companies filed [a counterclaim] under the Federal Interpleader Act, 28 U.S.C. §1335, to avoid multiple liability, and were discharged from the action after paying the proceeds into the registry of the court.

Meanwhile, Lillie sought to reopen her Michigan divorce proceeding to obtain redress for Clemen's apparent violation of the injunction against changing beneficiaries of the policies. In essence, what was being sought was a determination that the change was without legal effect due to the divorce court's injunction. Such a determination would have been res judicata on the issue of proper beneficiaries and would have deprived the district court of any meaningful decision in the interpleader action. To avoid such a result, the district judge enjoined proceeding with the Michigan action. It is that order that is under appeal.

It is clear that a district judge has the power to enjoin any proceeding in a state court affecting the property involved in an interpleader action. 28 U.S.C. §2361. While the litigation in Michigan would not have resulted in an order to pay the proceeds to Lillie, it would have served as a final determination of Clemen's right to name his mother and daughter as beneficiaries. Such a judgment would resolve questions at issue in the district court action, thereby having an effect on the rights of the parties in the property. To avoid the resolution of significant questions at issue in the interpleader action being made in the Michigan Courts where not all the parties of interest were involved, it was proper for the district court to issue its injunction under 28 U.S.C. §2361. The judgment is affirmed.